

J2SVHALS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 825 (ALC)

5 ELLIOT HALBERSTAM,

6 Defendant.

SENTENCE

7 -----x
8 New York, N.Y.
9 February 28, 2019
3:10 p.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
Southern District of New York

17 ANDREW BEATY

Assistant United States Attorney

18 STACEY G. RICHMAN

19 Attorney for Defendant

20 ALSO PRESENT: AARON SPIVACK, FBI
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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your
3 appearance for the government.

4 MR. BEATY: Good afternoon, your Honor.

5 Andrew Beaty, for the government.

6 With me at counsel table is Special Agent Aaron
7 Spivack.

8 THE DEPUTY CLERK: And for the defendant.

9 MS. RICHMAN: Good afternoon, your Honor. Pleasure to
10 see you.

11 Stacy Richman, on behalf of Mr. Halberstam.

12 THE COURT: All right.

13 We are here to impose sentence today in the case of
14 *United States v. Halberstam*.

15 In preparation for today's proceeding, I've reviewed
16 the presentence report, a submission from the government, two
17 victim impact statements, as well as a submission from the
18 defense with eight attachments.

19 Is there anything else that I should have, counsel?

20 MR. BEATY: No, your Honor.

21 MS. RICHMAN: No, your Honor.

22 THE COURT: Defense counsel, have you reviewed the
23 presentence report? I know from your submissions you have; but
24 have you, in fact, reviewed that with your client?

25 MS. RICHMAN: I have, your Honor.

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1 THE COURT: And Mr. Halberstam, have you reviewed the
2 presentence report?

3 THE DEFENDANT: I have, your Honor.

4 THE COURT: Defense counsel, other than what's
5 contained in the presentence report, are there any objections
6 to the presentence report other than what's contained in the
7 notations to the presentence report?

8 MS. RICHMAN: Just as I've submitted it as Exhibit 3,
9 I had written everything to your Honor so that it is all
10 contained within Exhibit 3A.

11 THE COURT: Okay.

12 Counsel for the government, have you reviewed the
13 presentence report?

14 MR. BEATY: Yes, your Honor.

15 THE COURT: Any objections to anything in the report
16 by the government?

17 MR. BEATY: No, your Honor.

18 THE COURT: Although I'm no longer required to
19 strictly adhere to the sentencing guidelines in imposing
20 sentence, I am still required to consider the applicable
21 guideline range in imposing sentence. And to do so, it is
22 necessary that we accurately calculate the guideline sentencing
23 range.

24 The probation report calculates a guideline range of
25 168 to 210 months, based on a total offense level of 35 and

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1 Criminal History Category I. And I will note that there is a
2 ten-year mandatory minimum.

3 Any objection to that guideline calculation by the
4 government or the defense?

5 MR. BEATY: Your Honor, I think, as the Court is
6 aware, there is a plea agreement in place in this case in which
7 the parties agreed on a stipulated guidelines range of 135 to
8 168 months. The reason for the difference in calculation is
9 probation's assessment that an enhancement for the defendant's
10 role in the offense applied, which raises the guidelines by two
11 offense levels. The government submits that the stipulated
12 guidelines range to which it agreed in the plea agreement is
13 the appropriate range.

14 THE COURT: Okay.

15 And what's defense counsel's position?

16 MS. RICHMAN: The government and defense have
17 conferred. And we agree with the government's position as to
18 the guideline range as set forth in the plea agreement, because
19 at the time of the offense, the supervision had terminated.

20 THE COURT: So to be clear, it is the position of the
21 government and the defense that that two-level enhancement that
22 was not contemplated in the plea agreement should not apply; is
23 that correct?

24 MR. BEATY: Your Honor, the government is bound by the
25 plea agreement in which it agreed with defense that that

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enhancement did not apply.

THE COURT: Okay. Based on the agreement of the parties, I will find that the appropriate guideline range is 135 to 168 months, and that's based on a total offense level of 33 and Criminal History Category I.

Is there any reason I should not adopt the presentence report, counsel for the government or the defense?

MR. BEATY: No, your Honor.

MS. RICHMAN: No, subject to comments that I had submitted to your Honor.

THE COURT: Okay. I adopt the presentence report.

I note that I have the authority to vary from the guidelines; I have the authority to depart from the guidelines. And again, the guideline range is 135 to 168 months. There is still a ten-year mandatory minimum.

I will, at this point, hear from any victims that wish to be heard.

Counsel for the government, are there any victims that wish to be heard?

MR. BEATY: Yes, there are.

The government would request that in the transcript the names of the victims be redacted out, although they will introduce themselves here in open court.

THE COURT: Okay.

MR. BEATY: Thank you, your Honor.

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1 UNIDENTIFIED SPEAKER: At 13 years old, I was
2 uncertain about matters that concerned so many typical,
3 emerging adolescents. I was uncertain about as to whether my
4 strained relationship with my brother was worth salvaging; if
5 my sexuality -- or lack thereof at this point -- was cause for
6 concern; if my friends were ones worth preserving, despite
7 being the cause of so much bullying and torment in the past;
8 and if I was merely in an overall place as an emerging
9 teenager.

10 I began seeing Elliot Halberstam for counseling at the
11 Jewish Family Services because of his pristine reputation and
12 renown skills as a social worker. Week after week I would
13 enter his office to disclose my secrets, my fears, my
14 ambitions, my internal conflicts, and my dilemmas in hopes of
15 find a modicum of psychological relief.

16 As a young child, I was unable to determine what
17 methods of therapy were appropriate; but, in retrospect, I
18 realized that Halberstam's methods were anything but. He would
19 press me for information about my sexuality, claiming that even
20 the saintliest of his clients had confided their ugliest
21 thoughts with him. He would constantly steer our conversations
22 to topics which I was uncomfortable discussing. And when I
23 would not entertain the idea of confiding in him regarding
24 these topics, he would impose a silence that would last for
25 what seemed far longer than any therapy session should last in

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1 its entirety.

2 But at that point I was emotionally stranded. And
3 Halberstam understood this and used it as an opportunity to
4 prey on my vulnerability. He instilled in me this notion that
5 no other person would ever be able to comprehend my complexity.
6 He relentlessly reminded me that he was the only person who
7 could ever supply me with unfettered support and guidance in my
8 ever-so complicated life. He had been grooming me since the
9 day I entered his office on day one.

10 Over the span of my time under Halberstam's guidance,
11 out-of-session context evolved from work emails to private
12 emails, from emails to texts, and texts to phone calls that
13 would go on for hours. He would feign sympathy when I let my
14 guard down, and he would remind me if I were to remain closely
15 acquainted to him, I would soon be able to escape so many of my
16 frustrations, particularly those involving family, community,
17 and academics.

18 After several months of close contact, Elliot gave me
19 a computer on loan. This computer was being remotely accessed
20 in part by Halberstam, granting him access to my emails, my
21 search history, giving him all the information he needed in
22 order to understand which subjects to prod at and use as
23 leverage to lure me further into his snare.

24 According to Halberstam, the primary obstacle barring
25 me from my freedom was my prudishness; and that my lack of

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1 sexuality and sexual expression was preventing me from properly
2 adapting to the outside world, which, of course, I would have
3 at my fingertips if I remained by his side.

4 He encouraged me to pursue a modeling opportunity that
5 had presented itself and posed as someone who had ties to the
6 agency and had offered me this position. He, together with
7 this fictional character, pressed me for pictures which were
8 innocent and just meant to prepare me for my future as a model,
9 until they were not.

10 I would pose my objections every time Halberstam
11 insisted that I take pictures which were just a little more
12 inappropriate than the last. But at this point resistance was
13 futile; he already had content that, if released, would forever
14 taint my reputation. Moreover, Halberstam was in a position of
15 authority at the very same organization that was supervised by
16 my mother, and I would not jeopardize my family at any cost.

17 A few weeks later, the demand for pictures evolved
18 into demand for action. At first, Halberstam requested that I
19 record myself engaging in sexual acts, and would give feedback
20 on these videos, pointing out details of the act that, if done
21 according to his criticisms, would have improved my sexual
22 prowess, bringing me one step closer to liberation.

23 Liberation from what exactly? At this point I was
24 entirely unsure.

25 After countless videos sent by text and email,

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1 Halberstam insisted that a real sexual encounter would be the
2 final step to tapping into my sexuality, and that I would then
3 be able to fend for myself when I would enter the real world.

4 I vehemently objected at first, as I was already
5 horrified about how far this ordeal had went. But as I protest
6 during through an innumerable amount of phone calls and texts,
7 my objections were shut down. At this point I fully understood
8 his intentions.

9 His first attempt at breaking through the barrier and
10 ridding me of my prudishness was unsuccessful, to say the
11 least, as I was completely incapable of remaining aroused in
12 his presence. Halberstam took this failure as an opportunity
13 to reinforce this theory that I was not yet prepared for the
14 real world and insisted that this nightmarish ordeal needed to
15 be reenacted a second time.

16 The next time he picked me up from school to bring me
17 to a hotel room, he had brought alcohol and Cialis, claiming it
18 would take the edge off and would enable me to be more
19 comfortable in this incredibly perverted and malicious
20 situation. He was more successful this time, but I knew he was
21 not going to stop until he was content with how I acted for and
22 around him; in other words, he was not going to stop.

23 These exploitations proceeded for months. He had
24 begun taking me to his private practice office to take
25 rehearsal photos and to rid me of my sexual inhibitions for a

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1 modeling career and a glamorous life of independence that, in
2 reality, was never going to come.

3 Throughout this grooming process, I had lost sight of
4 what exactly I was striving to accomplish before I met him. My
5 initial desire was to be able to find an appropriate means to
6 live a life filled with meaning and healthy relationships,
7 while being within the confines of my own personality and my
8 own comfort zone.

9 But after years of deceit and manipulation, Halberstam
10 had imposed his own aspirations and twisted desires onto me,
11 knowing good and well that the path he paved for me was nothing
12 less than heinous and self-destructive. Elliot Halberstam had
13 stripped me of the innocence and the virtues of the boy who
14 walked into his office six years ago.

15 Through the luck of an iCloud snafu, my mother had
16 intercepted snippets of conversations with myself and
17 Halberstam, and was courageous enough to ensure that this would
18 never go on again. However, the months following my mother's
19 discovery ushered in a tidal wave of overwhelming emotional
20 pandemonium that was, in some ways, as difficult to cope with
21 as the abuse itself.

22 The revelation of the abuse placed such a heavy strain
23 on my relationship with my parents that I believe the bonds we
24 once shared will never be able to be wholly rectified. I also
25 created a great deal of distance from my siblings, as I blamed

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1 myself for the shambles my family was left in after this
2 ordeal. I no longer wanted to socialize with friends or attend
3 work, and I completely isolated myself from the world.

4 After seeing two specialized therapists in the months
5 following the end of the abuse, I, as well as these therapists,
6 believed that I was adequately equipped with the coping
7 mechanisms that would enable me to proceed on my expected
8 trajectory of a year abroad. Over the course of a few weeks
9 overseas, I began to develop anxiety. I ignored the symptoms,
10 as I assumed that the panic was merely caused by being away
11 from home.

12 Several months passed, and the anxiety continued to
13 amplify. I suffered from immense and frequent panic attacks
14 which were set off by triggers associated with the abuse. And
15 I had developed an eating disorder in hopes of gaining control
16 of myself, while, in reality, I was only spiraling completely
17 out of it.

18 I had returned home after an abbreviated trip of six
19 months overseas to receive extensive counseling and emotional
20 and psychological support. I had eventually overcome the
21 eating disorder, but the residual impacts of the abuse did not
22 subside. To this day, I have contemplated suicide, I have
23 developed insomnia, and I don't have any desire to maintain
24 meaningful or intimate relationships with others. Generally, I
25 have lost motivation for everyday tasks, leaving my social and

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1 academic riggers severely damaged. I remain in treatment for
2 my anxiety and depression to this day.

3 Today, at 20, I still remain uncertain, but not of
4 matters necessarily suited for a 20-year-old, but of heavier
5 matters that countless survivors of abuse and exploitation must
6 grapple with.

7 Do I place trust in my family and my closest friends,
8 knowing that I still fear betrayal and manipulation? Is the
9 intimacy that I seek for the altruistic purpose of joy and
10 mutual support, or is it merely a superficial validation of
11 both my emotional and physical autonomy? Do my intentions
12 remain pure in my everyday decisions, or do the residual
13 effects from years of grooming and manipulation still linger?

14 These concerns continue to resonate in my mind,
15 distorting my idea of self-worth and altering my perception of
16 what it means to truly be at ease.

17 THE COURT: Okay. Thank you.

18 UNIDENTIFIED SPEAKER: I stand here before you with
19 the utmost respect for The Honorable Judge Carter, Mr. Beaty,
20 Ivy, Wendy, beloved supporters and survivors of sexual abuse;
21 and our godsend, Agent Aaron Spivack and his team.

22 I've been contemplating for a while on which
23 horrifying aspect of this nightmare I should focus on during
24 the limited time I have to address you here today. The truth
25 is, is that hours, days, weeks, and months would not be enough

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1 for me to express the trauma and horror that my son and my
2 family and my own mental health had to endure.

3 It has been four years of struggling with PTSD, an
4 eating disorder, dysfunction, trauma, depression, and suicidal
5 ideation. I keep asking myself how? How could it be that I
6 spent my life bubble-wrapping my most precious commodities, my
7 children, and still someone was able to penetrate so deeply.

8 The defense submitted a 36-page report trying to
9 absolve my son's molester from taking responsibility for his
10 heinous acts. He knew exactly what he was doing as he planned,
11 groomed, and manipulated my son, myself, and my family. He was
12 not overtaken by his childhood traumas or his responsibilities
13 for religion nor from stigma. He knew exactly what he was
14 doing. He wanted what he wanted, and he played everyone around
15 him until he got it.

16 He had set forth a selfish, repulsive goal, despite
17 taking an oath to be a responsible, professional, mental health
18 therapist, a therapist, one who is supposed to be a trusting
19 figure, where children like my son sought his help at their
20 most vulnerable moments. It was his duty to guide clients into
21 the light, and not the abyss of hell that we've been through.
22 Instead of helping innocent children, he used his power of
23 authority to fulfill his own filthy desires.

24 Humans have the right to choose, to decide between
25 right and wrong, to control their evil inclinations, and to get

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1 help when they are overwhelmed by immoral, antisocial desires.

2 As a therapist and a director of a mental health
3 agency, and even as a prisoner, according to the defense
4 reports, my son's molester appears to be very competent in
5 knowing how to direct people with mental health issues to seek
6 professional help. He should have directed himself. He knew
7 very well that his actions were immoral, unjust, and
8 detrimentally harmful to an innocent and developing young boy.

9 As a social worker, he used to give classes about the
10 harmful effects of child sexual abuse to teachers, camp
11 counsellors, rabbis, and community leaders. Knowing this, the
12 defendant could have chosen to get professional help, but
13 instead he focused all his energy on grooming, lying, and
14 deceiving my son, whom you just heard from.

15 My son is a hero. My husband is a man of outstanding
16 courage. Me, my heart is broken; there is a large part that
17 will never properly heal.

18 And we, the three of us, we too had a choice. We
19 could have shoved the entire ordeal under the rug and let the
20 perpetrator continue satisfying his nasty desires by preying on
21 countless, countless innocent boys.

22 But we did not do that.

23 We would not allow for even one more life to be
24 jeopardized. We chose to do the right thing. Even after
25 experiencing several failed paths, we did not give up.

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1 It has been a very, very long, painful road for us,
2 reaching this very moment, now, the moment where you, Judge
3 Carter, you have the power and the authority to allow my son to
4 feel justified, dignified, respected and, as he is supposed to
5 feel, that he is a true hero.

6 It is believed that a man who saves just one life, it
7 is as though he has saved the entire world.

8 Please, please today, my son is deserving of justice
9 for saving the entire world. Thank you.

10 THE COURT: Thank you.

11 UNIDENTIFIED SPEAKER: Your Honor, thank you for the
12 opportunity to address this Court.

13 THE COURT: You can sit or stand, whatever you're
14 comfortable with.

15 UNIDENTIFIED SPEAKER: Thank you for the opportunity
16 to address this Court.

17 For six months I've been practicing a speech in the
18 shower every morning that I was going to address the Court
19 until Monday, when I looked at the defense sentencing
20 memorandum submitted by the defense. It reads like a *Romeo and*
21 *Juliet* love story, a story of forbidden love, somebody finding
22 his soulmate, making himself the victim, the victim in this
23 crime. This memorandum is insulting and offensive in context
24 and wrought with lies and manipulation content.

25 I want to start off firstly with the defense

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1 referencing the Holocaust as an excuse for these crimes. This
2 is an insult to the six million dead. If there's one lesson we
3 learn from the Holocaust is that we rebuild after the
4 Holocaust, after destruction; we don't continue to destroy.

5 The defense talks about the perpetrator's conflicts.
6 Your Honor, we are all conflicted, we all come to crossroads in
7 our lives; yet we all have the right to choose our own path.
8 Free choice is what makes us human; it's what differentiates us
9 from the animals. It does not give us the right to break the
10 law and sociative norms.

11 The defense, in its memorandum, multiple times speaks
12 of the parents' concern that their son was a homosexual. Your
13 Honor, at no point did my wife or I ever bring this up to the
14 therapist to be addressed. This was brought in this memorandum
15 specifically to manipulate, to draw a parallel experience to
16 the perpetrator himself in order to create empathy.

17 The defense, in its memorandum, brings in literary
18 references, how the perpetrator was struck by a thunderbolt,
19 suddenly in love. However, it also references many times
20 nothing is sinister, nothing is nefarious. It seems to smell
21 more like a different literary reference, Mark Antony speech in
22 *Julius Caesar*; but, of course, Brutus is an honorable man.

23 The perpetrator was the therapist of my son. He was a
24 child. He was his patient. He was entrusted in his most
25 vulnerable state; took advantage of this in so many ways by

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1 creating a second persona. To say that all of this is not
2 nefarious and not sinister is nothing but false.

3 The defense says that the perpetrator is intensely
4 contrite. He is exceptionally contrite. He is contrite about
5 being caught, about no longer being perceived as the smartest
6 man in the room, about being the leader, the head of an
7 organization. He is a monster. He is a predator, preying on
8 the most vulnerable of our society.

9 To say that love made me do it, it can be an excuse
10 for anything; it can be an excuse for taking objects for theft,
11 for rape. If so, civility vanishes from our society. We are
12 human beings again with choices. And we are responsible for
13 those choices.

14 The defense states that this is not about child
15 pornography or the creation of child pornography for
16 distribution or manipulation of a young person. That's exactly
17 what this is about. This is exactly what the offender pleaded
18 guilty to. It's what he's responsible for. He cannot plead
19 guilty and then explain it away as puppy love, a minor who was
20 entrusted in his care at his most vulnerable. He's seeking
21 pity, not penance.

22 Your Honor, the guidelines, as stated by this Court,
23 are for pleading guilty and assuming responsibility. The
24 offender has done no such thing. He has not assumed any
25 responsibility for his actions, but continues to attempt to

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1 explain in a way and continues to manipulate and attempts to
2 manipulate the Court.

3 I would like to thank AUSA Beaty, Aaron Spivack, Ivy
4 Figueroa, Wendy Olson.

5 The government, in their memorandum, accurately
6 characterizes this impact statement, characterizes the actions
7 of the offender as disturbing, calculated, and extraordinarily
8 damaging. It was psychologically manipulative. He was an
9 entrusted psychologist and family friend; uses a second persona
10 to further manipulate and groom. He's inflicted serious damage
11 on the victim's psychological health, emotional stability, and
12 personal relationships.

13 Your Honor, the one thing I disagree with the
14 government is that he should be sentenced within these
15 guidelines. These guidelines are for the contrite, for those
16 who accept responsibility. To be honest, your Honor,
17 cumulatively more man-hours have been served in purgatory by my
18 wife, myself, and my son than the defendant is due to serve in
19 jail. Continues to be manipulative post plea and deserves
20 beyond the accepted guidelines.

21 I will agree with one thing that the defense wrote in
22 their memorandum, that this case reaches generationally, but
23 not generationally backward, generationally forward.

24 As the defense memorandum is wrought with Bible
25 references, let me make one of my own. When discussing justice

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1 many times in the Bible, a reason is given how justice should
2 be meted; that all the nations should see and hear and they
3 shall transgress no further. Justice must be served in order
4 to deter further transgressions and to restore civility to
5 society. Justice must be served so that victims feel it's
6 worthwhile to come forward and that a perpetrator won't be out
7 in less than a decade or even two. It must be that victims
8 have a voice that mean something so that perpetrators will not
9 continue to destroy our civil society, our institutions, so we
10 can gain trust in our institutions.

11 Your Honor, that is why your Honor is on the bench, to
12 ensure our civil society. It must be meted out so that
13 everybody will see and hear, and that they will transgress no
14 further; that there is justice and there is reason to come
15 forward; and the pain and the cost involved in making sure
16 justice is done is worth it for all victims.

17 Thank you, your Honor.

18 THE COURT: Okay. Thank you.

19 MR. BEATY: Your Honor, I believe one additional
20 person wishes to speak on the victim's behalf.

21 THE COURT: You can stand or sit whatever, you feel
22 more comfortable doing, but just make sure you're close to the
23 microphone.

24 UNIDENTIFIED SPEAKER: I just asked your Honor a
25 little while ago to say a few words.

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1 I run a victim advocacy organization in the Orthodox
2 Jewish community that combats child sexual abuse. And it is a
3 plague in our community. Just as you see in the media with the
4 Catholic Church and everything going on, the same thing --
5 possibly even worse -- is happening amongst us. And every day
6 our staff, we try to empower and encourage victims to go
7 forward to the police. I don't know how many times I have
8 reached out to law enforcement with cases of people that were
9 going to go forward and then they backed out due to pressure
10 and intimidation in the community. One in probably hundreds
11 actually go forward all the way.

12 This young man, his family went forward. The pain,
13 the suffering that they went through for the last few years, I
14 know a little bit of the pain of the victim, of the trauma
15 that, till this day, how it affects me and how it affects
16 people. And I know part of getting closure is the justice that
17 is happening in these courtrooms.

18 But it's not just about the victim; it's about all
19 those other children that could be possible victims. And
20 that's why the victims that do come forward, they come forward
21 to protect others. Abusers, child molesters, they don't just
22 have one victim. They always have more.

23 Your Honor, God gives each one of us responsibilities,
24 certain powers, what they can do, what they can't do. God put
25 you on this case for a reason, for you to oversee it: To send

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1 a strong message to the Orthodox Jewish community that child
2 sexual abuse won't be tolerated. If you sexually abuse a
3 child, you will be held accountable to the full extent of the
4 law. You're going to send a message to anybody that's thinking
5 of touching a child, this is what will happen to you. To the
6 victims that come forward, to know that they will be believed,
7 that the justice system will help them.

8 There's two girls in the crowd that are here from
9 Australia. They have been going after their abuser in Israel
10 for ten years and they cannot get justice. Victims in America
11 need to know our justice system will take care of them, will
12 help them, will support them when they come forward.

13 Your Honor, I'm asking you to give the harshest
14 sentence within the guidelines, to send a strong message to
15 both those victims that are out there and to any child abusers
16 out there that this has to end. Thank you.

17 THE COURT: Okay. Thank you.

18 I want to thank the victims for their statements. I
19 know that this was difficult for them.

20 I'll now hear from the parties regarding any issues
21 they want to raise about the appropriate sentence in this case,
22 starting with counsel for the government.

23 MR. BEATY: Thank you, your Honor.

24 Nothing I say could be nearly as impactful as what you
25 just heard from the victim and his family. I would just direct

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1 the Court to the complaint in the PSR that lays out these
2 communications in great detail, and otherwise rest on my
3 submission. The government submits that a guideline sentence
4 is appropriate here.

5 Unless the Court has any questions, I will end with
6 that.

7 THE COURT: Okay. Thank you.

8 MR. BEATY: Thank you, Judge.

9 THE COURT: Defense counsel. And defense counsel, I
10 think your mic is a little low; can you use the other mic
11 perhaps?

12 MS. RICHMAN: Good afternoon, your Honor. Good
13 afternoon to everyone.

14 And yes, the complainant is indeed a hero, as is his
15 family.

16 In no way, shape, or form was the intent of the
17 defense submission to shirk responsibility, to shade
18 responsibility. It was, as is the duty of defense counsel, to
19 give the Court a picture of Elliot Halberstam, how he evolved
20 to this place; and how he, as a human being, has harmed
21 another -- in a way, people prefer to be accused of murder than
22 to be accused of this -- and then to do these acts.

23 Please know, I hope that the family should know, most
24 importantly, from the very outset it was Mr. Halberstam's
25 desire to take responsibility fully and completely for his

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1 actions. He'll speak to you in his statement. And in his
2 statement and as the Court knows from reviewing the sentencing
3 memorandum, Mr. Halberstam himself was also touched as a child.
4 Certainly not to this extent, but it was somebody that trusted
5 him, that he trusted as well.

6 There's a couple of aspects I want to touch upon.
7 There was a document served yesterday by the people from an
8 organization that had asked not to mention the name of. And
9 please note that that work was mentioned in the presentence
10 report at paragraph 120, that he did indeed report that he had
11 worked for this organization. And it is clearly pointed out by
12 the letter from the organization that there was nothing
13 sinister and no criminal action would have been taken.

14 In my work with Mr. Halberstam, and Mr. Halberstam has
15 sought to be so painfully honest, that I have learned the
16 details of him coming together with his wife, his relationship
17 with his now brother-in-law, and his moment of when he was so
18 impacted by the complainant that he went forward.

19 The problem here is that this went on for a number of
20 months. And in Mr. Halberstam's mind, all of this had a finite
21 situation, as the young man was to go somewhere else.

22 And in terms of the concept of creating child
23 pornography, one of the reasons that we settled on the count
24 that we settled on is because none of this was for
25 distribution. This was, as wrong as it is, for Mr. Halberstam

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1 to have gone back onto the path that he was expected to lead.
2 It's known in Yiddish as the *derech*; the correct path, the
3 expected path.

4 Mr. Halberstam is, without question -- it's an
5 entirely unique situation. In our careers we've come in
6 contact with cases of child molestation of every different kind
7 of dimension. When I read the complaint, I was like, Oh, my
8 God. Who am I going to meet? What is this person? And I was
9 stunned to come to know the man.

10 And through my discussions with Mr. Halberstam -- and
11 I think the Court has also reflected on the letter of
12 Mr. Askenazi and his work with the community, also on behalf of
13 sexual abuse survivors and people that have had to live
14 closeted lives. It is, without question, a problem in our
15 community. But in coming to know Mr. Halberstam, he also came
16 to a place where he recognized his identity and the legitimacy
17 of that orientation.

18 What he did, he agrees, he is here for his punishment.
19 He wants to embrace every directive of the Court. And make no
20 mistake about it, whatever the sentence of the Court is, this
21 is something that will go beyond even our court, because upon
22 his release, whenever that may be, there will be the state
23 proceedings. And we will have further hearings, he will be
24 labeled, he will be supervised for the rest of his life in all
25 likelihood. So this is not a sentence of merely this Court,

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1 but it is the expansion also by what New York State and every
2 state in our union now provides as well.

3 What is saying to me about Mr. Halberstam and the
4 history that he comes from, this is not an offense upon
5 reviewing the Holocaust. Mr. Halberstam's father is here, is
6 indeed a survivor; his mother is a survivor of the war. And I
7 have unbelievably found there seems to be so much abuse within
8 the households from that dyspeptic growth of people that didn't
9 have parents and then they reign it down upon their children.
10 It should have been a time of rebuilding; it should have been a
11 time of expansion for all of the future.

12 And in this particular realm, this cleaving onto
13 religion and the very strict mores given to us by religion for
14 those that wish to remain within the orthodox sphere, this
15 particular case, aspects of Hasidism. There are certain things
16 that are simply not accepted, and they are buried and they are
17 put under the rug, and that's what provides for this. And
18 there needs to be a voice for both the victims and the victims
19 on the people that also abuse that have been sequestered and
20 have not been able to express themselves and these
21 peculiarities of our psyches evolve.

22 In every person's mind there are dark spots; and, yes,
23 we have choice. And he made all of the wrong choices here.
24 And it is if he has awoken as well, and he wishes to go forward
25 and only redeem himself. He recognizes the pain, he'll speak

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1 to that. He recognizes the pain not only to the complainant,
2 but also to the family. And he will pain himself every day, as
3 he has on each and every day.

4 This is not a referendum on abuse of children. It's
5 wrong. I personally know it's wrong. It's wrong. There's no
6 justification for it.

7 What the sentencing memorandum is to do is to
8 understand how this one individual, who, by every other mark of
9 his existence, was the child that wanted to please, that wanted
10 to accommodate, that wanted to do the right thing, and he so
11 has horribly done the wrong thing. And it was important for
12 the Court to understand how this man, who is a good man, who
13 has done something horrible, comes before the Court today.

14 In contemplating the aspects of 18 U.S.C. 3553(a), we
15 obviously have a litany of what we are to attend to in
16 sentencing and in consideration of the individual. And with
17 regard to this aspect, to protect the public from further
18 crimes of this defendant, I think this defendant is awake and
19 aware. And as each doctor had reviewed him -- Dr. McCarthy
20 said he was a low risk of recidivism; Dr. Krueger felt he was a
21 remote risk of recidivism because of his desire to engage in
22 treatment.

23 And, in fact, he has demonstrate what positive he can
24 contribute, even within the horrors that MDC has exhibited over
25 these last months and years. He has tried to counsel others.

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1 Yes, he has skills; yes, he employed those skills wrongly in
2 this situation. But he has the power to engage them properly
3 for others. He's instructed others; he's been recognized for
4 that.

5 In terms of the seriousness of the offense and to
6 promote respect for the law and provide just punishment for the
7 offenses, in the context of this individual, we all agree that
8 the abuse is wrong. It has had a cataclysmic impact upon this
9 person and this family.

10 But within the context of how we came to this place,
11 and what he can do to go forward, and the respect for the law
12 that will be carried forward in the rating of at least a level
13 2 -- perhaps a level 3 -- sexual offender, Mr. Halberstam will
14 wear the scarlet letter of this, as well, for his entire life.
15 And with that he carries the pain of the recognition of what he
16 has done to someone that I don't wish to offend, but he truly
17 did love, as wrong as that love was. The creation of the third
18 party had meant to be a positive; it was meant to show you can
19 go in another direction, you can have another choice. And then
20 indeed Mr. Halberstam took the choices unto himself.

21 I wanted the Court to understand evolution of an
22 individual that comes to this place, how he comes to this
23 place. What he still can't explain to himself and he'll
24 comment upon is that how did he not pull himself away when it
25 was his job to counsel others? And for this is the need for

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1 therapy going forward, something that's not available to us in
2 our facilities.

3 In reflecting upon the sentence for Mr. Halberstam,
4 your Honor, my request is that you sentence Mr. Halberstam
5 closer to the mandatory minimum. I recognize that there is a
6 range. I recognize the pain of all that have come here. But
7 there is a pain that created this situation as well, and that
8 needs to be spoken to also.

9 Most respectfully, your Honor, I have come to know a
10 man that has shocked me. And I was very happy when the
11 government agreed to finally meet with him, because sensitized
12 only by the act itself, it is hard to understand him as a human
13 being. But he is indeed a human being. And that which is
14 sufficient, but not greater than necessary is, I recommend to
15 the Court, the minimum.

16 THE COURT: Okay.

17 Mr. Halberstam, if you'd like to address me, now is
18 your opportunity. You don't have to say anything. But if
19 you'd like to, you may address the Court.

20 Now, Mr. Halberstam, I see you standing to show
21 respect for the Court. While I appreciate that, why don't you
22 have a seat and you can speak into the microphone and I can be
23 sure to hear everything that you have to say.

24 THE DEFENDANT: Your Honor, I must begin by
25 reiterating my contrition for the distress and the pain that I

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1 have inflicted on the complainant and his family. These are
2 not words of mere platitude; I am aware that my deceitful
3 actions have had a lasting negative impact, causing tremendous
4 anguish. And I know that I must pay for my crime and its
5 consequences.

6 I want the family and, most importantly, the
7 complainant to know that during my proper work, I did not have
8 a focus upon him, nor did I strategize for years to do what I
9 know is terrible.

10 My transgressions began from a true concern that he --
11 and I shall not say his name out of respect for all of you. I
12 have no right to utter it and for fear that there may be a
13 transcript of this proceeding. This began from a true concern
14 the complainant have a full and good life not restricted by
15 community mores. Homosexuality is not an abomination. In our
16 community, however, it is silently oppressed. This lack of
17 understanding and acceptance provides a haven to abuses.

18 I am wrong for what I have done to you, to your son,
19 to your family, and to the community. I am wrong for not
20 pulling myself from the rabbit hole of obsession for this one
21 person for whom I was directed to make appear and be mature in
22 order to skip a grade. I did not seek an adolescent; I saw him
23 as a young man, and I know that all that I did was wrong.

24 I want to be a positive in ensuring there is a voice
25 and light to protect others, to serve humanity in any way I may

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1 within the confines of what I know will be lifelong
2 restrictions. I am willingly subject to all directives of the
3 Court, the community and, most importantly, the family. If
4 there is anything I may answer or do to correct my hurt, I
5 shall do so as permitted by your Honor.

6 In addition to directly creating a victim through my
7 actions, I have also hurt many people in my life. My three
8 beautiful children have had to live without their father for
9 the past three years and three months and however long the
10 Court directs. They only speak to me briefly each week. I
11 have also deprived my elderly and unwell parents of their son,
12 and caused shame and embarrassment to my wider family, friends,
13 and community.

14 Your Honor, I cannot excuse my behavior. On
15 reflection, I do not understand how I did what I did to
16 another. I was abused as a child. I know the confusion, and
17 yet I repeated that pain to another.

18 I want to dedicate myself to properly helping others;
19 that is who I was meant to be and who I believed I was and who
20 I do believe I am. Not a day goes by without me reflecting on
21 my actions and praying for forgiveness.

22 As I sit before you today, I beg for your mercy and
23 the chance to be able to redeem myself and pay my debt to
24 society. I pray to God today and every day for healing for the
25 complainant and his family, for compassion and forgiveness.

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1 I implore you, please, to give me a second chance,
2 understanding, and leniency when pronouncing my sentencing
3 today. I will not disappoint this Court or our community
4 again. My contrition is consuming. I can never apologize
5 enough nor correct the past.

6 I deeply regret the impact that I had upon you.

7 Thank you.

8 THE COURT: Okay. I'll be back.

9 (Recess)

10 THE COURT: Counsel, is there any reason why sentence
11 should not be imposed?

12 MR. BEATY: No, your Honor.

13 MS. RICHMAN: No, your Honor.

14 THE COURT: Mr. Halberstam, are you satisfied with
15 your legal representation up to this point?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: I have considered all of the factors in 18
18 U.S.C. 3553, including the nature and circumstances of the
19 offense and the history and characteristics of the defendant.
20 While Mr. Halberstam has certainly had a very difficult life
21 and experienced a lot of trauma, that certainly does not excuse
22 or justify what he has done here.

23 I've considered the need to reflect the seriousness of
24 the offense, to promote respect for the law, to provide just
25 punishment for the offense, to afford adequate deterrence to

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1 criminal conduct, to protect the public from further crimes of
2 the defendant, as well as to provide the defendant with needed
3 educational or vocational training, medical care, other
4 correctional treatment in the most efficient manner. I've
5 considered the kinds of sentences available. I've considered
6 the sentencing guidelines, as well as the other factors in
7 3553.

8 As defense counsel indicated, there are many factors
9 in Mr. Halberstam's past that make him the person that he is
10 today. But I would note that this criminal conduct did not
11 happen because of the Holocaust, this criminal conduct did not
12 happen because of Mr. Halberstam's religion, this did not
13 happen because of his homosexuality. His homosexuality might
14 lead him to have sex, consensual sex, with another adult male.

15 The victim in this case was not an adult; the victim
16 was a child. Not only was the victim a child, the victim was a
17 child who sought help from a therapist. The victim was in a
18 very vulnerable, emotional state. And one of the things that
19 makes this case even more troubling is that often with victims
20 of sexual abuse, we recommend that they get therapy. For this
21 complainant, he will associate therapy not only with a vehicle
22 for helping him deal with trauma, but as the context within
23 which the trauma took place.

24 I have the authority to depart from the guidelines
25 upwardly or downwardly. I have the authority to vary from the

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1 guidelines upwardly or downwardly, and I choose not to do so.
2 I do think that a sentence within the guideline range is
3 appropriate in this case. But I do believe that a sentence
4 toward the high end of the range is appropriate.

5 Again, I want to thank the victims for their testimony
6 here today.

7 I will impose a term of custody of 165 months. I will
8 impose a term of supervised release of ten years. I will not
9 impose a fine.

10 What's the government's position on restitution at
11 this point?

12 MR. BEATY: Yes, your Honor.

13 The government will provide a proposed restitution
14 order within the 90 days provided by the statute.

15 THE COURT: What's the government's position on
16 forfeiture?

17 MR. BEATY: No forfeiture, your Honor.

18 THE COURT: I will impose the \$100 special assessment.

19 In terms of supervised release, I will impose the
20 mandatory conditions of supervised release; that Mr. Halberstam
21 not commit another federal, state, or local crime; that he must
22 not unlawfully possess a controlled substance; he is to refrain
23 from any unlawful use of a controlled substance. He must
24 submit to one drug test within 15 days of release from
25 imprisonment, and at least two periodic drug tests thereafter.

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1 He must cooperate in the collection of DNA as directed by the
2 probation officer. He must make restitution.

3 I will impose the standard conditions of supervised
4 release as set forth in the presentence report, standard
5 conditions 1 through 11, as well as standard condition 13. I
6 will not impose standard condition number 12 because standard
7 condition number 12 has been ruled improper by the Second
8 Circuit.

9 In terms of special conditions, I will impose the
10 following special conditions: That Mr. Halberstam provide the
11 probation officer with access to any requested financial
12 information. He must not incur new credit charges or open
13 additional lines of credit without the approval of the
14 probation officer unless he is in compliance with the
15 installment payment schedule. He must not have contact with
16 the victims in this case. This includes any physical, visual,
17 written, or telephonic contact with such persons.
18 Additionally, he must not directly cause or encourage anyone
19 else to have such contact with the victims.

20 The defendant shall undergo a sex-offense-specific
21 evaluation and participate in an outpatient sex offender
22 treatment and/or outpatient mental health treatment program
23 approved by the U.S. Probation Office. He shall abide by all
24 rules, requirements, and conditions of the sex offender
25 treatment program, including submission to polygraph testing

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1 and refraining from accessing websites, chat rooms, instant
2 messaging or social networking sites, to the extent that the
3 sex offender treatment and/or mental health treatment program
4 determines that such access would be detrimental to the
5 defendant's ongoing treatment.

6 The defendant will not view, access, possess, and/or
7 download any pornography involving adults unless approved by
8 the sex-offender-specific treatment provider. He must waive
9 his right of confidentiality and any records or mental health
10 assessment and treatment imposed as a consequence of this
11 judgment to allow the U.S. Probation Office to review the
12 course of treatment in progress with the treatment provider.

13 He must contribute to the cost of services rendered
14 based on his ability to pay and the availability of third-party
15 payments. I authorize the release of available psychological
16 and psychiatric evaluations and reports, including the
17 presentence investigation report, to the sex offender treatment
18 provider and/or mental health treatment provider.

19 The defendant must not have deliberate contact with
20 any child under 18 years of age unless approved by the U.S.
21 Probation Office. He must not loiter within 100 feet of places
22 regularly frequented by children under the age of 18, such as
23 schoolyards, playgrounds, and arcades.

24 The defendant must not view and/or access any web
25 profile of users under the age of 18. This includes, but is

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1 not limited to, social networking websites, community portals,
2 chat rooms, or other online environment audiovisual messaging,
3 etc., which allows the realtime interaction with other users,
4 without prior approval from the probation officer.

5 The defendant shall submit his person and any
6 property, residence, vehicle, papers, computer, and other
7 electronic communication or data storage devices or media and
8 effects to a search at any time, with or without a warrant, by
9 any law enforcement or probation officer with reasonable
10 suspicion concerning violations of a condition of supervised
11 release or unlawful conduct by the person and by any probation
12 officer in the lawful discharge of the officer's supervision
13 functions.

14 The defendant shall permit the U.S. Probation Office
15 to install any application or software that allows it to survey
16 and/or monitor all activity on any computers, automated
17 services or connected devices that he will use during the term
18 of supervision and that can access the Internet. The U.S.
19 Probation Office is authorized to install such applications for
20 or software. Tampering with or circumventing the U.S.
21 Probation Office's monitoring capabilities is prohibited. To
22 ensure compliance with the computer monitoring condition, the
23 defendant must allow the probation officer to conduct initial
24 and periodic unannounced examinations of any devices that are
25 subject to monitoring.

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1 I will impose the other conditions set forth in that
2 paragraph on page 37 of the presentence report.

3 Are there any open counts?

4 MR. BEATY: There are, your Honor.

5 At this time the government moves to dismiss the two
6 remaining open counts.

7 THE COURT: Okay. That is granted.

8 Is there anything else, before I advise the defendant
9 of his right to appeal, from the government or the defense?

10 MR. BEATY: Your Honor, the government would just
11 request that the Court remind the defendant of his obligation
12 to register under the federal Sex Offender Registration and
13 Notification Act. The conditions are set forth on page 5 of
14 the plea agreement.

15 THE COURT: Okay.

16 Anything else from the defense?

17 MS. RICHMAN: Yes, your Honor.

18 With regard to -- we're counseled now with regard to
19 special conditions of supervised release, to advise the Court
20 of our concerns. So one of those concerns is with regard to
21 deliberate contact with any child --

22 THE COURT: If the concern is about whether or not the
23 defendant can have contact with his children --

24 MS. RICHMAN: Yes.

25 THE COURT: -- I believe that that will be approved by

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1 the probation department.

2 MS. RICHMAN: If the Court will simply make note that
3 it is one of the concerns, because we have had issues where
4 this becomes something that then leads to another aspect of
5 litigation. And so that was my simple concern.

6 THE COURT: Okay.

7 Anything from the government on that?

8 MR. BEATY: The government takes no position. I think
9 it's generally assessed by probation. The government takes no
10 position.

11 THE COURT: Okay.

12 MS. RICHMAN: One of the concerns is during the term
13 of the incarceration, the children may want to call him, speak
14 to him. And so we don't want to even offend the direction of
15 the Court. And so if we could have a statement as to that so
16 that we have direction, your Honor.

17 THE COURT: Yes, counsel.

18 MR. BEATY: I believe the conditions of supervised
19 release wouldn't be imposed while the defendant is in prison.
20 The government would have no problem with just a clarification
21 from the Court that these would not limit his children from
22 visiting or communicating with him while he is in prison.

23 THE COURT: Okay. That is my understanding as well,
24 that these terms of supervised release would not kick in until
25 he's actually released. And I believe that the children that

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1 he has will all be over the age of 18 by then or close to it.

2 MS. RICHMAN: They should be, your Honor.

3 THE COURT: Okay.

4 Mr. Halberstam, you are required to register under the
5 Sex Offender Registration Notification Act, do you understand
6 that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Anything else before I advise the
9 defendant of his right to appeal, counsel for the government or
10 the defense?

11 MR. BEATY: No, your Honor. Thank you.

12 MS. RICHMAN: No, your Honor.

13 THE COURT: Mr. Halberstam, you have a statutory right
14 to appeal. There are time constraints on your ability to file
15 the notice of appeal. You should talk to your lawyer about
16 that.

17 If you cannot afford to hire an attorney to help you
18 prosecute the appeal, the Court would give you an attorney for
19 free.

20 Do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Again, I want to thank the victims for
23 their statements. I hope that the complainant in this case
24 fully realizes that there is much more to him than the worst
25 thing that has happened to him.

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1 And similarly, I hope that the defendant understands
2 that he is more than the worst thing that he has done.

3 We're adjourned.

4 * * *